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APR 05 2006

OFFICE OF PETITIONS

In re Application of :
Toby Smith :
Application No. 10/619,700 :
Filed: July 14, 2003 :
Attorney Docket No. P1721US01 :
:

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed March 24, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on October 27, 2005, for failure to timely file a reply to the final Office action mailed July 26, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained prior to abandonment of the application. An amendment after final was filed September 23, 2005 but by advisory action mailed February 28, 2006, the applicant was advised that the amendment did not place the application in condition for allowance.

The present petition under 37 CFR 1.137(b) is accompanied by a Notice of Appeal, a Pre-Appeal Brief Request for Review and a three month extension of time request.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$510.00 extension of time fee submitted with the petition on March 24, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 06-0540.

The Notice of Appeal filed March 24, 2006, has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, runs from the date of this decision.

The matter is being referred to Technology Center 1636 and for a review by the Technology Center of the Pre-Appeal Brief Request For Review filed March 24, 2006.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions